

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAURA DERMER, an individual,

Plaintiff,

v.

SALTWORKS, INC., a Washington State
corporation; MARK ZOSKE, Owner and
CEO of Saltworks, Inc., in his individual
capacity; "DOE(S) 1-100" employees of
SALTWORKS, INC.; and
"CORPORATION(S) XYZ 1-100,"

Defendants.

Case No. 2:23-cv-00443

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

**NOTE FOR MOTION CALENDAR:
Tuesday, August 22, 2023**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles, and it does not presumptively entitle parties to file confidential information under
2 seal.

3 2. "CONFIDENTIAL" MATERIAL

4 "Confidential" material shall include the following documents and tangible things produced or
5 otherwise exchanged:

6 (a) medical records and bills, and other healthcare records and information pertaining to any
7 party or non-party that would be subject to HIPAA (Health Insurance Portability and
8 Accountability Act of 1996) if in possession of a covered entity;

9 (b) the parties' financial, banking, or business information not subject to public disclosure,
10 including payroll records and other records such as a party or non-party's bank account,
11 tax records, and financial information reflecting wealth or earnings;

12 (c) employee files and records pertaining to any party or non-party containing or related to
13 information described in subsections (a) and (b), above, and sensitive employee files and
14 records;

15 (d) private business information that would be considered a trade secret; and

16 (e) information otherwise provided protection from disclosure under law.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as defined
19 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
20 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
21 or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the
2 public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
5 produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
7 categories of persons and under the conditions described in this agreement. Confidential material must
8 be stored and maintained by a receiving party at a location and in a secure manner that ensures that
9 access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
11 court or permitted in writing by the designating party, a receiving party may disclose any confidential
12 material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees of counsel to
14 whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the receiving party
16 to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular
17 document or material produced is for Attorney’s Eyes Only and is so designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and
19 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of confidential
22 material, provided that counsel for the party retaining the copy or imaging service instructs the service
23

1 not to disclose any confidential material to third parties and to immediately return all originals and
2 copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
5 otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition
6 testimony or exhibits to depositions that reveal confidential material must be separately bound by the
7 court reporter and may not be disclosed to anyone except as permitted under this agreement;

8 (g) the author or recipient of a document containing the information or a custodian or other
9 person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Material. Before filing confidential material or discussing or
11 referencing such material in court filings, the filing party shall confer with the designating party, in
12 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove
13 the confidential designation, whether the document can be redacted, or whether a motion to seal or
14 stipulation and proposed order is warranted. During the meet and confer process, the designating party
15 must identify the basis for sealing the specific confidential information at issue, and the filing party
16 shall include this basis in its motion to seal, along with any objection to sealing the information at
17 issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will
18 be applied when a party seeks permission from the court to file material under seal. A party who seeks
19 to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule
20 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will
21 result in the motion to seal being denied, in accordance with the strong presumption of public access
22 to the Court’s files.

23 5. DESIGNATING PROTECTED MATERIAL

1 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-
 2 party that designates information or items for protection under this agreement must take care to limit
 3 any such designation to specific material that qualifies under the appropriate standards. The
 4 designating party must designate for protection only those parts of material, documents, items, or oral
 5 or written communications that qualify, so that other portions of the material, documents, items, or
 6 communications for which protection is not warranted are not swept unjustifiably within the ambit of
 7 this agreement.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 9 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 10 encumber or delay the case development process or to impose unnecessary expenses and burdens on
 11 other parties) expose the designating party to sanctions.

12 If it comes to a designating party's attention that information or items that it designated for
 13 protection do not qualify for protection, the designating party must promptly notify all other parties
 14 that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see,
 16 e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or
 17 discovery material that qualifies for protection under this agreement must be clearly so designated
 18 before or when the material is disclosed or produced.

19 (a) Information in documentary form: (e.g., paper or electronic documents and deposition
 20 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating
 21 party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only
 22 a portion or portions of the material on a page qualifies for protection, the producing party also must
 23 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within seven (7) days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
 2 confidential designations without court involvement. Any motion regarding confidential designations
 3 or for a protective order must include a certification, in the motion or in a declaration or affidavit, that
 4 the movant has engaged in a good faith meet and confer conference with other affected parties in an
 5 effort to resolve the dispute without court action. The certification must list the date, manner, and
 6 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
 7 telephone conference.

8 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
 9 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
 10 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
 11 motion shall be on the designating party. Frivolous challenges, and those made for an improper
 12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the
 13 challenging party to sanctions. All parties shall continue to maintain the material in question as
 14 confidential until the court rules on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 16 LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
 18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 19 must:

20 (a) promptly notify the designating party in writing and include a copy of the subpoena or court
 21 order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
2 litigation that some or all of the material covered by the subpoena or order is subject to this agreement.
3 Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating
5 party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
8 material to any person or in any circumstance not authorized under this agreement, the receiving party
9 must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use
10 its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d)
12 request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that
13 is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently produced
17 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
18 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
19 modify whatever procedure may be established in an e-discovery order or agreement that provides for
20 production without prior privilege review. The parties agree to the entry of a non-waiver order under
21 Fed. R. Evid. 502(d) as set forth herein.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS
23

1 Within 60 days after the termination of this action, including all appeals, each receiving party
2 must return all confidential material to the producing party, including all copies, extracts and
3 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

4 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
5 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even
7 if such materials contain confidential material.

8 The confidentiality obligations imposed by this agreement shall remain in effect until a
9 designating party agrees otherwise in writing or a court orders otherwise.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 Dated: August 23, 2023.

12 Respectfully submitted,

13
14 **AKW LAW, P.C.**

15 /s/ Ada K. Wong

16 Ada K. Wong, WSBA #45936

17 Attorney for Plaintiff

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/s/ Justin E. Bolster

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or otherwise,
4 in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,
5 constitute a waiver by the producing party of any privilege applicable to those documents, including
6 the attorney-client privilege, attorney work-product protection, or any other privilege or protection
7 recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed.
8 R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is
9 intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information
10 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected
11 information before production. Information produced in discovery that is protected as privileged or
12 work product shall be immediately returned to the producing party.

13 DATED this 23rd day of August 2023.

14
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16 

17 John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Western District of Washington on _____ in the case of
Laura Dermer v. Saltworks, Inc., et al., Cause No. 2:23-cv-00443. I agree to comply with and to be bound
 by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
 will not disclose in any manner any information or item that is subject to this Stipulated Protective Order
 to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western
 District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Attorneys for Defendants

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED: August 23, 2023, at Seattle, Washington.

/s/ Kaila A. Stewart

Kaila A. Stewart, Paralegal